

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**LINDA D. SINK**

## Claimant

VS.

## SAM'S WHOLESALE CLUB

Respondent

AND

## NATIONAL UNION FIRE

## Insurance Carrier

Docket No. 198,112

## ORDER

Respondent appeals from an April 10, 1995 Preliminary Hearing Order by Administrative Law Judge Floyd V. Palmer.

## ISSUES

The Administrative Law Judge granted claimant's request for medical treatment. In his Order, the Administrative Law Judge found "that the motor vehicle accident more probably than not aggravated claimant's condition, but did not cause it." Respondent appeals the issue of whether claimant's injury, for which medical treatment was ordered, arose out of and in the course of claimant's employment with respondent.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant seeks medical treatment for injuries to her arms and body as a result of a series of traumas from March 1993 to November 2, 1994 from performing her duties as a cashier at Sam's Club. Respondent does not dispute that claimant has been diagnosed as having right carpal tunnel syndrome, but argues that claimant has failed to meet her burden of proving her condition arose out of and in the course of her employment. In the alternative, respondent argues that claimant's carpal tunnel syndrome is the result of or

aggravated by an intervening, non-work related motor vehicle accident which occurred on October 31, 1994.

Claimant testified that in March of 1993 her right arm and neck started getting sore. She was sent by the respondent to St. Francis Hospital where she was treated until October 1993. She felt that her condition was worsening. She had complaints in her elbow, arm, shoulder, neck and upper back. She also described symptoms of tingling in her right hand. Claimant then went to see her family physician, Dr. Reynoso, who treated her including administering a cortisone injection in her arm. This afforded claimant some temporary relief, however, her pain increased in February 1994, at which time she was sent by respondent to Dr. Huston for an IME. Claimant testified that her condition continued to worsen after February 1994, including the onset of symptoms in the left upper extremity during the summer of 1994. However, she did not seek further medical treatment for her hands, wrists or forearms.

On October 31, 1994, claimant was injured in a motor vehicle accident. She subsequently returned to Dr. Reynoso, complaining of neck pain, but was also rubbing her hands. According to claimant, Dr. Reynoso inquired about her hands and she responded that they had been bothering her and going numb more than before. Dr. Reynoso referred claimant to a neurologist, Dr. Moreng, who performed an EMG and nerve conduction studies on her right upper extremity, diagnosing carpal tunnel syndrome.

Respondent contends that claimant either did not develop her carpal tunnel syndrome at work or that it was aggravated by the automobile accident of October 31, 1994. In support of its argument respondent points to the fact that no diagnosis of carpal tunnel syndrome in either wrist was made by any doctor prior to the automobile accident. In addition, the last physician claimant saw prior to her automobile accident for her upper extremity complaints was Dr. Huston on February 24, 1994. He diagnosed lateral epicondylitis and extensor tendinitis of the right proximal forearm at the elbow. He did not diagnose carpal tunnel syndrome, nor does his report make any reference to hand or wrist complaints. Claimant acknowledges that she did not seek further medical treatment from respondent following the February 24, 1994 IME by Dr. Huston, nor did she complain of hand or wrist symptoms to Dr. Reynoso during 1994 prior to the automobile accident. However, she explains that Dr. Huston indicated that there was nothing that could be done for her and that she would just have to live with her condition. There is no question that the claimant made complaints as to her hands and wrists, in addition to her arm, neck and shoulder during the treatment she received in 1993. Accordingly, taking the record as a whole, the Appeals Board finds that claimant has sustained her burden of showing personal injury by accident arising out of and in the course of her employment with respondent.

This brings us to the issue of subsequent intervening accident. Although the Administrative Law Judge found that claimant had carried her burden of proof and awarded benefits, he further found "that the motor vehicle accident more probably than not aggravated claimant's condition, but did not cause it." Although it is true that claimant's first complaints of hand and wrist problems appearing in the medical records during 1994 are subsequent to the motor vehicle accident, there are no medical opinions relating these symptoms to that accident other than to note the timing of the accident and the symptoms by history. It is significant that claimant did not describe any worsening of her symptoms following the motor vehicle accident. Furthermore, she did not seek medical treatment for her hand problems from Dr. Reynoso following the accident. Rather, the hand problems came up as a result of an inquiry from the doctor. Claimant has consistently related those problems to her employment and their onset and progression as being prior to the automobile accident. The Appeals Board finds based upon the evidence presented, that

more probably than not the automobile accident did not aggravate claimant's preexisting carpal tunnel syndrome.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the April 10, 1995 Order of Administrative Law Judge Floyd V. Palmer should be, and is hereby affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Leonard D. Fisher, Topeka, Kansas  
H. Wayne Powers, Overland Park, Kansas  
Floyd V. Palmer, Administrative Law Judge  
David A. Shufelt, Acting Director